



1121 L Street, Suite 806, Sacramento, CA 95814

September 30, 2011

Mr. Phil Isenberg, Chair  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Mr. Isenberg:

The State and Federal Contractors Water Agency on behalf of itself and its constituent agencies noted above appreciate the chance to comment on the Fifth Draft Delta Plan. While the draft is an improvement from the fourth draft, we remain concerned with the plan's ability to achieve the co-equal goals of ecosystem restoration for the Delta and a more reliable water supply for California. Together, we have been participating in a comprehensive comment process with other water agencies and other key stakeholders, including the coalition of statewide urban and agricultural interests.

To that end, we endorse and incorporate by reference all past comments on the draft plans submitted by

State and Federal Contractors Water Agency  
State Water Contractors  
San Luis Delta-Mendota Water Authority  
Westlands Water District  
Metropolitan Water District of Southern California  
the Alternative Delta Plan developed by the Ag-Urban Coalition

We also wish to convey both general and specific comments on the Fifth Draft plan and its incorporated policies.

Bay-Delta Conservation Plan. The Delta Reform Act provided BDCP with a clear path to implementation by directing its insertion into the Delta Plan if it meets certain clear standards, such as its compliance with the Natural Communities Conservation Plan process. The Legislature's direction to include the Bay Delta Conservation Plan into the Delta Plan was clearly intended to have real meaning, not an illusory one. We recommend that the Sixth Draft affirm that actions within BDCP, once it is in the Delta Plan, by definition are consistent with the Plan itself.

**Directors**

**James M. Beck**  
*Kern County Water  
Agency*

**Jeff Kightlinger**  
*Metropolitan Water  
District of Southern  
California*

**Bill Harrison**  
**Dan Nelson**  
**Jason Peltier**  
*San Luis & Delta-  
Mendota Water  
Authority*

**Beau Goldie**  
*Santa Clara Valley  
Water District*

**Steve Robbins**  
**Jill Duerig**  
*State Water Project  
Contractors  
Authority*

**Tom Birmingham**  
*Westlands Water  
District*

Delta Flow Criteria (ER P1). The Draft Plan wrongfully includes a proposed policy regulation to alter the Bay-Delta Strategic Workplan of the State Water Resources Control Board. The SWRCB has wisely decided to prioritize its review of water quality objectives. BDCP will include a comprehensive package of new water operation criteria, habitat restoration and a strategy to address other stressors. Once the comprehensive nature of BDCP is known, SWRCB will be able to review issues such as water quality and potential effects on the environment or other water users. The Public Policy Institute of California in December 2009 eloquently described the “California Water Myth” that “More Water Will Lead to Healthy Fish Populations.” The package of habitat and water conveyance/operations improvements within BDCP will provide the SWRCB with the necessary context to make accurate, informed decisions. Calls for SWRCB to make these decisions outside of this context pose a threat to achieving the co-equal goals and violates the Delta Reform Act’s specific preservation of SWRCB’s authority over water rights and water quality. We suggest you support and urge the SWRCB to expeditiously complete its existing Bay-Delta Strategic Workplan and incorporate its timetable and strategy as part of the Delta Plan.

The statement that there can be no planning for new conveyance prior to adoption of new Water Quality Control Plan (WQCP) objectives [P 85, L12-15] is contrary to pursuit of both coequal goals and exceeds the Council’s authority. Furthermore, it is inconsistent with current facts as this planning has been integral in the development of the BDCP. The Council does not have the authority nor is it wise policy to hold critical elements to achieving the coequal goals hostage to each other. The Council was developed to help streamline and coordinate action, not to apply yet more obstacles to progress. This sentence should be deleted. Planning for water quality objectives is precisely part of what the BDCP is doing, including the development of operational scenarios and criteria that will be reviewed as part of the State Water Resources Control Board’s process to update the WQCP.

Future Water Contracts (WR P2). We support transparent public processes, yet object to the Draft Plan’s efforts to specify a particular public process for “future contracts and agreements to export water from the Delta...” The current proposed policy is overbroad and would compromise the most efficient use of water by hindering negotiation of transfers between willing sellers and willing buyers.

Regional Water Self-Reliance (WR P1). We are concerned with the Stewardship Council’s proposal to deem future water operations in the Delta inconsistent with the Delta Plan if a “recipient region” fails to comply with “water sustainability” policies of the Council. The Council has overstepped its statutory authority by seeking to review local water rate structures; regulate compliance with the 2009 legislation seeking to lower urban per-capita water use by 20 percent by the year 2020; and decide whether the region has complied with a new Council requirement to add elements to urban and agricultural water management plans.

The Ecosystem. The Council has focused its attention on flow as the ecosystem solution in the Delta. By focusing on flow, the Delta Plan ignores the causal mechanisms. Absent from the Delta Plan is an adequate program to address key stressors.

Ecosystem Restoration Program (ER P2, ER R6). The Delta Plan appears to rely heavily on the Department of Fish and Game’s Conservation Strategy. That is problematic because DFG does not recognize or explain in a meaningful way how DFG developed the Conservation Strategy to ensure it will not impede the goals of the Delta Plan and the Bay Delta Conservation Plan. The Delta Plan must further “the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.” Public Resources Code, § 29702. To do that, the Delta Plan must promote a water supply that meets the needs for reasonable and beneficial uses of water.

Water Code, § 85302(d). Similarly, the BDCP must allow for projects to proceed that restore and protect water supply. DFG committed to that goal in the BDCP planning agreement. Nothing in the Conservation Strategy considers how it may affect (positively or negatively) those planning efforts. Such an analysis within the Conservation Strategy is critical to ensure it is consistent with important state policy and DFG's commitments. The Council must review the ERP with a critical eye to determine which aspects, if any, should be incorporated into the Delta Plan, and not accept the plan wholesale.

In addition to these general comments, we offer further detail below. Please also see Attachments B and C, incorporated by reference, which offer specific comment on policies and recommendations and line-by-line edits.

#### Water Management

In a number of places the 5<sup>th</sup> draft contains clear mischaracterizations of the water reliability goals and water management practices of water users. A prime example is in the very first pages of the Preface, where the draft implies that water customers are demanding “as much water as you want, whenever you want, forever.” [P 5, L 23-24, L 30-32] While some individuals may think that the implication that the public water agencies responsible for delivering water expect to receive all the water they might want all the time is, of course, completely without support. Such statements serve only to belittle the legitimate water supply reliability needs of tens of millions of people reliant on water from the Delta and its watershed, and raise questions about the Draft’s commitment to the Legislature’s co-equal goal of “providing a more reliable water supply.” Similarly troubling is the assertion that the export contracts themselves somehow contribute to the supply reliability problems the Delta Plan is supposed to address [P 5, L 27-28; P 77 L 12-13]. These contracts are an expression of public policy and nothing in the Delta Reform Act or guidance to the Council suggests otherwise. Such opinions are baseless and immaterial to the Delta Plan as contemplated by the Delta Reform Act (Act), and they compromise the Draft’s objectivity. They should be deleted.

We reiterate our objection to the conflation of Section 85021 of the Act (“reduce reliance”) with the “objectives...inherent in the coequal goals” specifically delineated in Section 85020 and the position that the Delta Plan “must address” this policy [P 67, L 20-25; P69 L 25]. There is no dispute that Section 85021 is state policy. Progress toward it must be made by all state agencies, and an effective Delta Plan will contribute to such progress. However, it is a fundamental misreading of the statute to assert that the Council must use the Plan to reach beyond the Delta into far-away local decision-making. The statutes defining the content of the Delta Plan (sections 85020 and 85300) do not reference “reduce reliance” as a necessary component of the Delta Plan. Further, as we have previously stated, reduced reliance will be achieved through local resource investments and is not synonymous with a requirement for reduced exports.

The draft continues to stress *only* public trust, reasonable use and waste policies, but completely ignores the California Constitutional requirement to put state water to beneficial use to the fullest extent of which it is capable in the interest of the people and for the public welfare [P 26, L 1-2; P 64-65, Box only includes partial reference to Article X, Section 2]. This bias against consumptive use of water underlies the entire Plan and reflects what can only be interpreted as an unfortunate intent by the Council to seek to regulate water use far beyond its authority [P 26, 64]. The Council should reconsider the general tenor of the draft Delta Plan to assure it is a constructive rather than destructive proposal for action. In short, to contribute to the water supply reliability prong of the coequal goals, the Plan should improve certainty so that critical long-term water management actions and economic development can take place.

The draft's discussion of groundwater management continues to overstate the deficiencies of groundwater management in California [P 90, L 33-36]. Generally, the representations of groundwater management are outdated and present an inaccurate and distorted picture that is a disservice to the public.

WR R5 relating to the permitting of a new point of diversion, place of use, or purpose of use remains vague. Its meaning and impact must be clear. If the intent is to regulate existing water rights, then this recommendation conflicts with the Act's direction that nothing in the Delta Plan is to affect water rights and it should be deleted. If that is not the intent, it should explicitly state that it is only meant to apply to new water rights applications. In addition, use of "feasible" in this context begs the question of how that is defined. While a water project alternative may be "feasible" that doesn't necessarily mean it's affordable or wise.

#### Bay Delta Conservation Plan

We again encourage and request a specific statement in the Delta Plan regarding how water supply and water supply reliability will be achieved through the implementation of the Bay Delta Conservation Plan (BDCP). The Act is quite clear that the BDCP, and its water management benefits – for both the environment and water supply – was considered by the Legislature to be an important and integral component of an effective Delta Plan, should it satisfy the requirements for incorporation in section 85320. It would be illogical for the Act to include such direction if the Legislature also believed the BDCP somehow be inconsistent with the Delta Plan, the coequal goals, or the policy enumerated in section 85021 to "reduce reliance on the Delta in meeting California's future water supply needs." To ensure no ambiguity, we provide the following suggested language and request the Council include it in the Delta Plan as part of its discussion of baselines related to "performance measures":

Consistent with legislative direction to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan pursuant to section 85320 of the Act, the Council finds that any water supply benefits accruing as a result of implementation of the BDCP, including future operation of new Delta conveyance facilities, are consistent with the application of Water Code Section 85021.

Such a statement would reflect comments already made by Council members and staff in public but which have yet to be reflected in writing thus far and doing so would remove uncertainty and ambiguity regarding the issue.

#### Covered Actions

The draft asserts that a project that is a covered action "may not proceed until" the Council deems it consistent with the Delta Plan [P 53]. This absolute veto, nor the authority it assumes, does not appear anywhere in the Act. Such a posture can only be interpreted as an intent for the Council to become the super-regulator that can trump regulatory decisions of other agencies, which the legislative history explicitly said it would not be. Nothing in the Act prohibits a project from moving forward after a Council determination that it is not consistent with the Delta Plan. A Council determination that a project is not consistent with the Delta Plan no doubt will have significant influence on the appropriate regulatory agency's decision whether to approve the project under the agency's existing authority or in any litigation over a regulatory approval. However, that is far different than and provides no basis for the claim that a project cannot proceed. The Council's determination that it will consider a covered action to have a "significant impact" if it "cumulatively" causes an impact is inappropriate and needs to be removed or thoroughly revised. Given the huge number of actions and dramatic changes that will be

occurring in the Delta, this seems to give Council unfettered discretion to find just about every single action to have had a significant impact simply because it is one of the cumulative actions being undertaken in the Delta, e.g. as part of the BDCP [P 57].

The 5<sup>th</sup> Draft Delta Plan asserts the Council has “contingent authority to approve conveyance improvements” and the “authority to *dictate in the Delta Plan conveyance improvements it views as meeting the coequal goals*” and “the authority to *regulate* conveyance improvements [Appendix A, P 3]. This is a stunning claim. The Act does not provide the Council with any authority to “regulate” conveyance improvements nor to “dictate” conveyance improvements. While new conveyance is identified in Section 85020 of the Act as “inherent in the coequal goals” -- and thus a necessary component of the Delta Plan -- that, again, is not equivalent to the Council being authorized to, capable of or the appropriate venue for undertaking such a project or conveying regulatory authority over its management.

#### Science and Adaptive Management

The Delta Plan lays out a very detailed structure for adaptive management encompassing three phases and nine distinct steps. A more generalized framework that provides overarching guidelines and flexibility to adapt to unique situations might be more appropriate. Furthermore, there is excess information on the specific phases/steps in this Chapter that is academic and background information that could easily be moved to an appendix. The level of specificity of the Delta Plan Adaptive Management framework may not be suitable for all Covered Activities. And this is a very science/research oriented structure which assumes continuous monitoring and evaluation feedback. The nature of some Covered Activities may be of limited scope or duration and **thus not suited for an Adaptive Management process at all.**

In general, however, draft Chapter 2 does a good job presenting an adaptive management framework and conceptual discussion as to how it might be applied in implementation of the Delta Plan. However, the draft misses an important, and potentially far more constructive, opportunity to articulate how the Delta Plan, and the Delta Science Program specifically, could advance the development and application of models, the efficacy and accuracy of monitoring, and the analytical tools and methods essential to bringing it all together. With the provision of the Delta Science Program and Delta Independent Science Board, the Delta Stewardship Council is uniquely positioned to improve the breadth and quality of our scientific understandings in ways that the existing, regulatory based, processes cannot.

The draft states that, “Science is important because it defines the scope of current problems facing the Delta...” In fact, the scope of our current problems is well understood to extend far beyond the current scientific understanding. As an example, it has been long acknowledged that multiple stressors are affecting the state of the Delta ecosystem and that understanding the relative magnitude and interaction between these stressors is essential for developing effective solutions. Yet, the vast majority of the Delta related scientific effort has been myopically focused on the absolute effects of the CVP and SWP, ignoring or failing to establish the relative contributions of the multitude of other stressors, ultimately leading to the environmental conditions we confront today. The prosecutorial discretion of the regulatory agencies does not compel them to explore these other, widely recognized stressors, but the Council can, both through direction provided to the Delta Science Program and coordination and synergizing of existing State and federal programs.

Examples of how the Delta Science Program could meaningfully advance the state of Delta science include facilitating:

1) development and/or refinement of relevant conceptual models, or models quantifying ecosystem processes, including quantitative life cycle models for fishes – numerous scientists have for years recommended the development of these tools to improve the implementation of management actions;

2) improvement and/or replacement of current monitoring practices to address known geographic or system flaws or gaps – the Fall Mid-Water Trawl, for example, has known geographic and sampling limitations that have yet to be addressed;

and 3) development and/or refinement of analytical methods, tools, and independent scientific review processes to assess the data and improve the relevance of results.

Also, two areas where the Delta Plan could further expand the common understanding and acceptance of Delta science is by 1) expanding the breadth of participation by stakeholders and 2) acknowledging and addressing the limitations of peer review. On the first point, the current draft emphasizes reliance upon the established programs like the IEP. While certainly there's a continuing role for these programs, they also represent a certain status quo, particularly in terms of culture, that has brought us to this point. To improve upon this, the Delta Plan should call for a review of the relevance and effectiveness of current efforts to inform decisions to refine, redirect, or reinforce the current, substantial investment of resources. For example, reviewing the selection process for the Proposal Solicitation Packages or other means of supporting the questions Delta science programs should ask should be built on a greater stakeholder-driven process. In the end, common acceptance of the results is dependent upon the success of joint fact finding and exploration.

On the topic of peer review, the 5<sup>th</sup> draft identifies peer reviewed science as the “most desirable” without acknowledging any of the limitations of peer review. There are studies that suggest that peer review may only increase the quality of the published research slightly, if at all, and that it typically cannot detect plagiarism or falsified data because the information upon which the paper is based is often not provided. Further, the review process can add months and even years to the advancement of scientific knowledge. Lastly, critics have identified instances where the peer review process has lead to the suppression of new and/or contrary results. The peer review process is important to the development of science but in and of itself does not ensure a more reputable product, thus, its role must be considered in the context of the science needs, which may mean it is not the most desirable approach. The Delta Science Program should establish an independent review process considers these pitfalls and that provides for the time and scope necessary to test fundamental questions if results are to be accepted as relevant to management of the Delta.

Lastly, the Delta Science Program is arguably the most “value added” aspect of the any future Delta Plan. In light of this, it is disappointing that Chapter 2 does not articulate any goals and objectives defining success nor performance measures. We agree with the Delta Independent Science Board that goals and objectives for shaping the Science Plan should be written (see DISB comments, taken from their “Final - Synthesis of Recommendations from the DISB on the Fifth Staff Draft Delta Plan, September 16, 2011, below).

“Monitoring: The short section on monitoring on page 48 leaves us wondering if this implies that the DSP will undertake a comprehensive monitoring program. Indeed, throughout it is not always clear what exactly the DSP will do and what it expects other agencies or research institutes will undertake on its behalf.

Policies: The one policy statement relating to application of AM is left to Chapter 3 and is a sub-policy of G P1. It should be repeated at the end of this chapter as a recommendation and worded more as a standalone idea. Other problem statements and recommendations could be included as well, such as one that speaks to the need for a Delta science plan.

Performance Measures: There are none. It would be useful to include some measures of performance regarding AM implementation and in terms of financing and effectiveness of the DSP.”

Page 37, lines 36-38 of the Delta Plan state ***“The Council requires that the nine-step adaptive management framework be used for proposed covered actions involving ecosystem restoration and water management.”*** The Delta Plan further states on page 38, lines 10-11, ***“The Council will use the nine-step adaptive management framework in Figure 2-1 to evaluate the use of adaptive management for proposed covered actions for ecosystem restoration and water management.”*** Somewhat contradictory text is contained on page 39, lines 1-5, ***“Ecosystem restoration and water management covered actions should include an adaptive management plan that considers all nine steps of this framework; however, they need not be rigidly included and implemented in the order described here. The intent is to build logical and transparent information exchange and decision points into management actions that increase management options and improve outcomes, not to add a new layer of inflexible processes and bureaucracy.”*** The later text provides hope that the DSC will recognize that adaptive management programs should be designed to reflect the specific needs and nature of various projects. However, the overall impression of this chapter is that the Delta Plan and DSC have very specific expectation of what constitutes acceptable adaptive management and that all covered actions will be required to demonstrate compliance with this framework—regardless of whether it is appropriate for any specific actions.

Page 37, lines 40-41 state ***“The policy describing how covered actions for ecosystem restoration and water management area expected to demonstrate compliance with the adaptive management framework is provided in Chapter 3.”*** The process for certification of consistency is contained as Policy GP1 on pages 60-61 of Chapter 3. Although this policy states that the adaptive management provisions should be ***“appropriate to the scope of the covered actions....”*** the policy sets forth specific requirements that the adaptive management plans must ***“describe the approach to be taken for each of the nine steps of the adaptive management framework of Chapter 2.”***

This Chapter also contains requirements related to “Best Available Science.” It sets standards that must be followed for all covered activities use of science (NRC and State of Washington) and requires that projects ***document that the science used follows the criteria adapted from the National Research Council report as they apply to the Delta...*** Like with the adaptive management program a strong science consideration may be foundational to the development of covered actions—but maybe not for all projects and activities. The rigid approach to science, as with adaptive management, should be reconsidered and modified to ensure appropriate rigor without imposing “analysis paralysis” gridlock or unrealistic expectations, as well as recognizing the likelihood of the need for exceptions to the “rules”.

Providing guidelines for the use of defensible science in project planning and decision making may be an appropriate component for the Delta Plan. However, to dictate strict standards that must be followed undermines State and local agencies authorities and obligations as provided for in Public Resources Code sections 21000 et sec.

### “More Natural Hydrograph”

Despite a pledge at the Council’s June meeting in reaction to comments regarding the 4<sup>th</sup> draft, the language regarding the need for a “More Natural Hydrograph” was not changed to using language such as a “More Naturally Variable Hydrograph”. Although we have been once again assured such a change will be made, we reiterate our request here for the record [P 108, L 8; P 110, L 42; P 112, L 2, 31; P 120 L 18]. In addition, the use of “flow” rather than “hydrograph” is similarly problematic in that it is shorthand for various characteristics that go well beyond simple “flow” as the welcome box on page 113 describes [P 112, L 3-9, 34, 36].

### Chapter 6: Improve Water Quality to Protect Public Health and the Environment

Overall, the Council has done a good job in Chapter 6 of presenting important water quality issues in a balanced manner, including indicating where there is scientific uncertainty and active research ongoing that is anticipated to provide further clarification of water quality impacts in the Delta. Also, this chapter primarily includes recommendations, as opposed to regulatory policies, to other agencies with jurisdiction on water quality control. The approach of including recommendations is appropriate and should be used more extensively in other sections of the Delta Plan. See Attachment C for line-by-line comments.

### “Procedural” Issues in the Draft

Although the draft recommends a stakeholder process for development of guidelines pertaining to the “Water Reliability Element”, there is no similar recommendation for such a process related to the “Conservation Oriented Rate Structure” [P 83-84]. There should be. Simply referencing concepts developed in Washington State is not enough. In addition, there is no discussion of the need to differentiate between retailers and wholesalers and urban and agricultural districts.

We do not believe the Council is the appropriate forum in which to develop a fee to fund its own activities [P 211, L 20]. While the Council could consider convening a process to develop recommendations regarding a fee structure, the proper venue for actually determining such fees and how they would be administered is in the Legislature. Moreover, the 5<sup>th</sup> draft Delta Plan is so anemic in its proposals for near-term actions to promote the coequal goals that there is little to assuage the skepticism of arguable beneficiaries, i.e. the targets of fee imposition, that there will be sufficient value-added by implementation of the Delta Plan to justify them paying such fees.

Although the 5<sup>th</sup> Draft only provided gross numbers for proposed budgetary needs, a more detailed handout was provided at the Council’s August meeting. Under the “Science” heading, there is a line item of \$20M for unspecified “Studies/grants”. There is no substantiation for such a line item and considering this one line represents some 40% of the strawman budget need, it makes no sense to include it at this time. Indeed, we urge the removal of this line item and replacing it with some narrative describing a process whereby the Council, under the leadership of its lead scientist and the input of the Independent Science Board, would undertake an assessment of all pertinent scientific activities taking place in the Delta, their funding sources, etc. and work to recalibrate those efforts based on recently developed understanding of the wide range of stressors on the system and have that process come back to the Council with recommendations on a new Science Plan/Program and its funding needs (taking into account the already existing funding, e.g. \$30M/year the export contractors provide to the Interagency Ecological Program). This would be a much more effective approach than demanding a large new pot of money for undefined purposes when a strategic approach is lacking.



Finally, we reiterate and incorporate by reference our objections and concerns provided in previous SFCWA comment letters pertaining to the Council's administrative procedures as delineated in Appendix B of the 5<sup>th</sup> Draft Delta Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron Buck", with a long, sweeping horizontal line extending to the right.

Byron M. Buck  
Executive Director

Attachments

## Attachment B (Policies and Recommendations)

### Suggestions to Improve Identified Policies and Recommendations

Overall, the entire approach of the Delta Plan's policies and recommendations is one that increases rather than decreases levels of uncertainty related to water supply reliability improvements and inappropriately injects another layer of bureaucracy rather than streamlining and improving state engagement in the Delta. The proper focus should be on creating incentives for action and coordination of state and federal agency actions, with review of local management decisions occurring only in the limited circumstances where the coequal goals are threatened or implementation of the Delta Plan potentially thwarted. In addition, the locus of the Council's authority is circumscribed by the Act to be primarily the Delta proper, not the entire state.

With regard to WR P 1 the current language is vague and appears to assert an inappropriate oversight role in second-guessing of local decision making with the potential for significant disruptions to planning and management that would reduce water supply reliability rather than increase it per the requirements of the coequal goals. We suggest that initially the Plan should simply indicate that an agency that is not compliant with state law should not be eligible for grant/bond funding and leave it at that. Everything else in the policy should be changed to a recommendation subject to becoming a policy when the Council does its first update of the Plan in 3-5 years. Until there's more information about what these new directives entail, how long they would take to develop, the administrative costs of implementation and the variety of outcomes they might derive, it makes no sense to be so determinative in outlook. An overarching problem with this "policy" is the apparent threat to cut or prevent movement of imported water supplies across the Delta which goes beyond any authority of the Council.

In addition, this policy still includes the ambiguous and unworkable trigger that failure by one *"or more water suppliers that receive water from the Delta"* to comply with listed actions will itself cause movement of water through the Delta to be inconsistent. In the first place, the Council is not authorized to deem an action inconsistent unless the action violates the legislatively adopted criteria. An action is only inconsistent if it "will have a significant adverse impact on the achievement of one or both of the coequal goals" or implementation of flood control programs. The Council simply cannot call an action inconsistent simply because the project proponent (or a sub-agency) has not adopted a practice the Council thinks it should. More to the point here, while it is not clear, is the Council proposing that if for example a DWR contractor has not adopted one of the Council's proposed practices, then the Council can simply stop a DWR action that would provide Delta water to all of its contractors? Or if a contractor's sub-agency has not adopted one of the Council's proposed mandates, then is the contractor ineligible to pursue Sacramento Valley water transfers? This proposed policy is well beyond any logical reading of the statutory language and as suggested above should be deleted or, at a minimum, be significantly rethought, even if it persists as a recommendation.

WR R3 says to implement a priority for grant dollars for agencies that include a Water Reliability Element in their planning by 12/31/2012 but WR R1 doesn't have the guidelines for such an element being completed until that date. Such a "priority" date needs to be moved back at least 6 months.

ER P1 should be revised to remove the chilling effect it could have on planning and investment in water management improvements that somehow touch the Delta. The "policy" that the SWRCB review water quality objectives and adopt necessary revisions is fine, but the Council should take the opportunity presented by the development of the Delta Plan to make a recommendation and/or act as the facilitator of dramatically improved scientific input into the SWRCB's process rather than in essence inserting itself into that process without requisite expertise or authority. This role of ensuring a more robust scientific inquiry and input that goes beyond the status quo paradigm is critical to the effective and most timely achievement of the coequal goals. In addition to revising ER P1 to reflect such a shift in its focus, there should be added to Chapter 2 a more definitive discussion of the role of the ISB and a newly developed Science Program/Plan in contributing to a more comprehensive and effective approach to the SWRCB's Water Quality Control Plan process. The discussion about what the Council "could" consider if the SWRCB process is delayed in meeting the mid-2014 target is an empty exercise that does nothing but add controversy to regulatory proceedings beyond the Council's mandate. Why include it at all when it can only become a hindrance to various activities that should be undertaken regardless of what the SWRCB outcome? Stopping all progress simply because progress is lacking on one front is bad public policy. The hypothetical statements should be removed. If the SWRCB process does not appear to be making timely progress at some future time, the Council can develop recommendations at that time based on a known situation and circumstances.

ER P4 regarding set-back levees inappropriately utilizes the words "where feasible" since they again do not necessarily incorporate any consideration of cost-benefit or even the basic issue of the amount of funds available to take action. This should require an evaluation only, and a report to the Council as to why, if "feasible", a set-back levee wasn't pursued rather than a trying to effectuate a mandate to require them.

In addition to our general comments, we offer the following specific amendments to the draft policies.

FP R5, R6 and FP R12 should be deleted

#### Chapter 1 - The Delta Plan

#### Chapter 2 - Science and Adaptive Management

#### Chapter 3 - Governance

**G P1** Certifications of consistency with the Delta Plan must address the following:

- A covered action must ~~be consistent with the coequal goals and the inherent objectives. In addition, a covered action must be consistent with each of the policies contained in this Plan implicated by the covered action, not be inconsistent with the Delta Plan and as a result have a significant adverse impact on achievement of one or both of the coequal goals~~ The Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with

all relevant policies may not be feasible. In those cases, covered action proponents must clearly identify areas where consistency is not feasible, explain the reasons, and describe how the covered action nevertheless, on whole, is consistent with the coequal goals ~~and the inherent objectives.~~ In those cases, the Delta Stewardship Council may determine, on appeal, that the covered action is consistent with the Delta Plan.

- If BDCP is incorporated into the Delta Plan, then covered actions under the BDCP and associated Federal actions are, by definition, consistent with the Delta Plan and not subject to the certification process
- All covered actions must be fully transparent by disclosing all potentially significant adverse environmental impacts and feasible mitigations of those adverse impacts.
- As relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Chapter 2).
- Ecosystem restoration ~~and water management~~ covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management consistent with the Delta Plan. This requirement shall be satisfied, where appropriate, through:
  - An adaptive management plan that describes the approach to be taken for each of the nine steps of the adaptive management framework of Chapter 2, and
  - Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.
- All covered action proponents shall certify that the covered action shall comply at all times with existing applicable law. **(page 60 of the 5<sup>th</sup> Draft)**

#### Chapter 4 - A More Reliable Water Supply

**WR P4R1.** A covered action to export water from, transfer water through, or use water in the Delta ~~is could be~~ inconsistent with the Delta Plan if the covered action ~~negatively impacts~~ has a significant adverse impact on achievement of one or more of the coequal goals ~~and one or more.~~ One of the water suppliers that receive water from ~~factors in causing such an impact could be~~ the Delta ~~significantly causes the need for the covered action by failing~~ proponent's failure to comply with one or more of the following: Compliance with State law [bwb1]

- Urban water suppliers, as applicable
  - Adopt and implement an Urban Water Management Plan and all required elements and measures, meeting the standards and timelines established in Water Code section 10610 et seq.
  - Adopt and implement a plan to achieve 20 percent reduction in statewide urban per capita water use by December 31, 2020, meeting the standards and timelines established in Water Code section 10608 et seq. ~~Agricultural water suppliers~~

➤ Agricultural Water Supplies, as applicable

- Adopt and implement Agricultural Efficient Water Management Practices including measurement of the volume of water delivered to customers, adoption of a pricing structure based in part on the quantity delivered, and implementation of specific conservation measures that are locally cost effective and technically feasible, meeting the standards and timelines established in Water Code section 10608 et. seq.
- Adopt and implement an Agricultural Water Management Plan and all required elements, meeting the standards and timelines established in Water Code section 10800 et seq.

➤ ~~Water Supply Reliability Element~~

- ~~• To promote accountability throughout the state in achieving the coequal goals, water suppliers shall, no later than December 31, 2015, expand an existing or add a new Water Reliability Element in their Urban Water Management Plan and/or Agricultural Water Management Plan. Water suppliers may also meet this requirement by including a Water Reliability Element in an approved Integrated Regional Water Management Plan or other water plan that provides equivalent information.~~
- ~~• The Water Reliability Element shall detail how water suppliers are sustaining and improving regional self-reliance and reducing reliance on the Delta through investments in local and regional programs and projects, and shall document actual or projected reduction in reliance on Delta exports. At a minimum, the Water Reliability Element shall include:~~
  - ~~— A plan for possible interruption of Delta water supply due to catastrophic events: Identify how reliable water service will be provided or shortages managed for minimum periods of 6 months, 18 months, and 36 months in the event that diversions or exports from the Delta are interrupted during an average water year, dry water year, and following three dry water years.~~
  - ~~— Implementation of planned investments in water conservation, water efficiency, and water supply development: Identify specific programs and projects that will be implemented over a 20-year planning period and how they are consistent with the coequal goals and will contribute to improved regional self-reliance and reduced reliance on the Delta, including, but not limited to, the following strategies:~~
    - ~~\*— Water conservation~~
    - ~~\*— Water use efficiency~~
    - ~~\*— Local groundwater and surface storage~~
    - ~~\*— Conjunctive use programs~~
    - ~~\*— Water transfers~~
    - ~~\*— Water recycling~~
    - ~~\*— Treatment and use of currently non-potable groundwater~~
    - ~~\*— Stormwater capture and recharge~~
    - ~~\*— Saline water and brackish water desalination~~
- ~~• **Evaluation of regional water balance:** Provide an assessment of the long-term sustainability of the water supplies available to meet projected demands within the supplier's hydrologic region, as defined by California Water Plan 2009 Update, over the 20-year planning period. If~~

~~the region's demand exceeds available supplies, identify the steps being taken through one or more of the Integrated Regional Water Management Plans to bring the region into long-term balance. If the region's demands exceeds available supplies and it does not have an Integrated Regional Water Management Plan or the Plan does not address the steps being taken to bring the region into balance, then describe how these plans are helping to bring the region into long-term balance. If there are no Integrated Regional Water Management Plans, then describe how the supplier's programs and projects are helping to bring the region into long-term balance.~~

- ~~• **Conservation-oriented water rate structure:** Evaluate the degree to which the supplier's current rate structure sustainably encourages and supports water conservation.~~

~~Water suppliers shall, by December 31, 2020, develop and implement a conservation-oriented rate structure, which may include consideration of a water budget-based rate structure that sustainably encourages and supports more efficient water use without causing a shortfall in system revenues. (page 82 of the 5<sup>th</sup> Draft DP)~~

**ER P1.** See Chapter 5, Restore the Delta

~~**WR P2.** All new contracts, contract modifications, contract renewals and agreements to export water from, transfer water through, or use water in the Delta except transfers for up to one year in length, are not consistent with Delta Plan unless they have been developed in a transparent manner consistent with Department of Water Resources' revised policies adopted in 2003 for contract renewals and permanent transfers included in Appendix C or comparable policies issued by the Bureau of Reclamation.~~

~~**WR P2.** [The subject policies, which DWR adopted in 2003, were meant to only apply for major SWP contract negotiations and would be inappropriate for long-term water transfer agreements. This language should be deleted.]~~

## Chapter 5 - Restore the Delta Ecosystem

~~**ER P1** Development, implementation and enforcement of new and updated flow requirements for the Delta and high-priority tributaries is key to the achievement of the coequal goals. The State Water Resources Control Board should update review the Bay-Delta Water Quality Control Plan objectives and establish flows as follows:~~

- ~~a) By consistent with the California Water Code, including Sections 13000, 13170 and 13240-13244 and By June 2, 2014, adopt and implement updated complete review of flow objectives for the Delta that are necessary to achieve the coequal goals.~~
- ~~b) By June 2, 2018, develop complete instream flow criteria studies for high-priority tributaries in the Delta watershed that are necessary to achieve the coequal goals.~~

~~Prior to the establishment of revised flow objectives criteria identified above completion of EP 1 (a), the existing Bay-Delta Water Quality Control Plan objectives shall be used to determine consistency with the Delta Plan.~~

By June 30, 2013, the Delta Stewardship Council will request an update from the State Water Resources Control Board on items ER P1 (a) and (b). If the Board indicates the items (a) or (b) cannot be met by the dates provided, the Delta Stewardship Council will ~~consider and may amend the Delta Plan to achieve progress on the coequal goals in place of the updated flow objectives. For example, the Delta Stewardship Council could confer with the Board to identify measures, including recommendations for additional staffing and funding, that would assist in achieving items ER P1 (a) and (b).~~ By March 1, 2012, the Council will confer with the Board to determine any data, scientific understanding, or information that the board seeks that the Council or the Independent Science Board may be able to provide.

- ~~1. Determine that a covered action that would increase the capacity of any water system to store, divert, move, or export water from or through the Delta would not be consistent with the Delta Plan until the revised flow objectives are implemented.~~
- ~~2. Recommend that the State Water Resources Control Board cease issuing water rights permits in the Delta and the Delta watershed (or, if the absence of flow criteria is specific to one or more of the major tributaries, then the recommendation could be focused on the impacted areas). (page 86, 113 and 138 of the 5<sup>th</sup> Draft DP)~~

**ER P2.** Habitat restoration actions shall be consistent with the habitat type locations shown on the elevation map in Figure 5-2, and accompanying text shown in Appendix D, based on the Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (DFG et al. 2011), with minor alterations.

The Delta Stewardship Council may amend the Delta Plan to incorporate revised figures and text from the Ecosystem Restoration Program's Conservation Strategy as the strategy is revised. **(page 117 of the 5<sup>th</sup> Draft DP)**

**ER P3.** Actions other than habitat restoration, including new or amended local or regional land use plans, shall demonstrate that they have, in consultation with the Department of Fish and Game, avoided or mitigated within the Delta the adverse impacts to the opportunity for habitat restoration at the elevations shown in Figure 5-2. This policy does not apply within the following areas, defined as of January 1, 2012:

- Incorporated cities and their spheres of influence
- The Clarksburg Growth Boundary
- The Contra Costa County Urban Limit Line
- The Mountain House General Plan Community Boundary **(page 117 of the 5<sup>th</sup> Draft DP)**

**ER P4.** State and local agencies constructing new levees, or substantially rehabilitating or reconstructing existing levees in the Delta shall evaluate, and, where feasible, incorporate alternatives (including use of setback levees) that would increase the extent of floodplain and riparian habitats. When available,

criteria developed under RR R4 shall be used for determining appropriate locations for setback levees. **(page 119 of the 5<sup>th</sup> Draft DP)**

**ER P5.** Agencies proposing covered actions shall demonstrate that the potential for new introductions of or improved habitat conditions for nonnative invasive species have been fully considered and avoided or mitigated in a way that appropriately protects the ecosystem. **(page 124 of the 5<sup>th</sup> Draft DP)**

#### Chapter 6 – Improve Water Quality

**ER P1.** See Chapter 5

#### Chapter 7 – Reduce Risk to People, Property, and State Interests

**RR P1.** Floodways shall not be encroached upon nor diminished without mitigating for future flood flows. This policy does not apply to ecosystem restoration projects or any ongoing agricultural or flood management activities unless they significantly decrease the existing level of flood protection. **(page 165 of the 5<sup>th</sup> Draft DP)**

**RR P2.** The following areas shall not be encroached upon because they are critical floodplains and may also provide ecosystem benefit (refer to Figure 5-3). This policy does not apply to ecosystem restoration projects or any ongoing agricultural or flood management activities, or maintenance and repair of existing infrastructure, unless they significantly decrease the existing level of flood protection.

- Areas located in the Yolo Bypass from Fremont Weir through Cache Slough to the Sacramento River including the confluence of Putah Creek into the bypass
- The Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the Department of Water Resources or the U.S. Army Corps of Engineers. (DWR 2010a)
- The Lower San Joaquin River Floodplain Bypass, located on the Lower San Joaquin River upstream of Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing. This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, RD 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011. This area may be modified in the future through the completion of this project. **(page 165 of the 5<sup>th</sup> Draft DP)**

**RR P3.** Covered actions in the Delta must be consistent with Table 7-1 in the Delta Plan. **(page 173 of the 5<sup>th</sup> Draft DP)**

**RR P4.** Prior to the completion of the Department of Water Resources' *A Framework for Department of Water Resources Investments in Delta Integrated Flood Management*, guidelines for the Delta Levee Special Flood Control Projects and Subventions programs (included as Appendix H) shall be used to determine consistency of projects using state funds with the Delta Plan. This Framework shall be completed by the Department of Water Resources, in consultation with the Central Valley Flood Protection Board and Delta Stewardship Council, by January 1, 2013. Upon completion, the Framework shall be considered by the Delta Stewardship Council for adoption to direct State investments for levee operation, maintenance, and improvements in the Delta. If this Framework is not completed by January



1, 2013, the Delta Stewardship Council will define a strategy for State investments. **(page 178 of the 5<sup>th</sup> Draft DP)**

Chapter 8 – Delta as Place

Chapter 9 – Finance Plan

|

## Attachment C (Line-by-line edits)

### Specific Editorial Comments

P 3 L 9: **delete** "...~~seeming~~ abundance." Abundance is a fact most of the time.

P 3 L 17: **add** "...and as part of a water conveyance system for many others."

P 5 L 23-24: **delete** this sentence. The insinuation that water agencies have had this viewpoint is simply wrong and offensive. To say the Delta Plan "establishes" the principle is an overstatement to say the least. No one in the water management community has presumed this and their water supply contract shortage provisions prove it false. If anything, environmental regulators have sought to impose conditions consistent with this unbalanced perspective, contrary to the public trust and now in opposition to the coequal goals. As noted elsewhere in the document, DWR's reliability report has assessed the likelihood of such full deliveries as minimal. The very existence of this report puts a lie to the assertion that full supply reliability has been or is water users' expectation.

P 5 L 25: **delete** "...so that ~~the~~ Californians...."

P 5 L 27-28: **delete** this sentence. The notion that current export contracts should not be the basis upon which reliability is measured is well out of bounds of the Delta Plan's purpose or purview. Such a statement evidences a lack of understanding of the contracts and their provisions related to supply expectations that are integral too them. The contracts represent no constraint on achieving the coequal goals and are irrelevant to the Council's duties.

P 5 L 30-32: **delete** this sentence. We know of no one who actually believes this statement or asserts it. Again, there is an insinuation that the export community has such "false expectations", which as with the sentence at lines 23-24 above, is an offensive mischaracterization.

P 6 L 11: **add** "...on the Delta to meet future water supply needs." The state policy of section 85021 of the Act is not a mandate to reduce reliance on the Delta in absolute terms, but in relation to meeting future demands with other sources of supply. This sentence should thus be corrected to accurately represent the actual language and policy direction of the Act as a whole.

P 6 L 41: **delete** "...limits how effective ~~the~~ state and regional water managers...."

P 7 L 29: **delete** "...implemented in the next ~~to~~ 10 years...."

P 15 L 24-26: **suggest** adding invasive species and pollution to the mix. As written, the perception provided to the reader is that water management is the primary culprit with little consideration of the growing understanding of the tremendous impact of other stressors and external factors (ocean

conditions, climate change, deficient food supplies, etc.) on species and the ecosystem. Also, to say “failed” natural resource policy begs the question of how much worse it could have been without the resource policies that have been implemented; i.e. “failed” compared to what? Again, these sorts of loaded, pejorative and accusatory terms should have no place in a Delta Plan, unless it intends to be a polemic too.

P 19 Box re Biological Opinions on Long-Term Operations, L 1: “NMFS and USFWS recently reviewed the long-term...” The review was several years ago, in 2008, which doesn’t really qualify as “recently”, especially considering all the related activity in Judge Wanger’s courtroom.

P 19 Box re Ongoing Uncertainty: The description of the court cases needs to be updated. The May 2010 decision is not relevant anymore and the text should describe the December 2010 decision on delta smelt, which declared the biological opinions to be unlawful and directed the USFWS to address identified deficiencies. This narrative will need to be updated after the Salmonid BO decision and should also reflect the Fall X2 Preliminary Injunction decision issued August 31<sup>st</sup>.

P 20 L 8: **modify** “...consequently, this has contributed, along with environmental regulation that wasn’t contemplated when the projects were constructed, and other stressors on the ecosystem, to water contractors in recent years generally receiving ~~receive~~ less water than....”

P 22 Table 1-1: Delta Conservancy > **add** “Designated as a primary state agency...” to be consistent with the Act. CVFPB > **add** “Plans flood controls facilities along...” CALEPA > though the SWRCB is part of CALEPA, it would be more informative to the reader to list the SWRCB for this box rather than CALEPA. You may want to add Office of Pesticide Regulation as well, since their regulations have an impact on water quality too. U.S. Bureau of Reclamation > **add** “...maintains more than 700 miles....” NMFS > **delete** “...recovery of salmon ~~in the Delta~~ to the point....” since the salmon are only transiting the Delta proper, with ocean conditions being critical, as well as hatching and rearing in the upper watershed.

P 24 L 32: **substitute** “Groundwater is sustainably managed in most ~~some~~ areas of the state,...” As noted in this draft, areas of actual sustained overdraft are quite limited and this sentence should reflect that.

P 35 L 30-31: **delete** This sentence regarding satellite derived information about groundwater overdraft misstates what the study actually measured and completely disregards the presentation made to the Council by the USGS, which pointed out the limitations of the satellite study and what it really meant with regard to groundwater management. If the sentence is not deleted, it should be modified to accurately portray what the satellite derived data really meant, and acknowledge its significant limitations (e.g. only 3 data points). There is no question groundwater management should be improved and science has a role to play, but overstating the issue is not constructive.

P 59 Figure 3-2: First box: **add** “...excluded under Water Code section 85057.5(b) or by the Delta Plan?”

P 62 L 20-23: **delete** We are troubled by and object to the proposed requirement of filing a consistency determination for an action that is by definition part of the Delta Plan. There is no need for such a filing and doing so in the context of “covered action” appeals could, at the least, result in a 4 month delay to an action that, again, by definition is consistent with the Delta Plan by having been integrated into it. At worst, this allows a second opportunity to unravel what will have been a carefully crafted plan approved by all of the fishery agencies, DWR, USBR and numerous other stakeholders.

P 67 L 20-25: **delete or move** The “reduce reliance...in meeting California’s future water supply needs” policy of section 85021 is mentioned nowhere else in the Act, particularly not in section 85300 et seq. outlining the contents of the Delta Plan, nor is it included as part of section 85020 as being “inherent” in the coequal goals for management of the Delta. Consequently, it is not something that “the Delta Plan must address” (as asserted in line 14 above). Certainly section 85021 is an important policy that the Delta Plan will help the state address, but the fact is it is not a direction of the Act vis-à-vis the Delta Plan, so it should be moved out of the bullet list.

P 68 Box ¶ 7 L 2: **substitute** “...must be made more **reliable** ~~predictable~~.” “Predictability” is related to but not really a part of the reliability issue with respect to the SWP and CVP. As noted in the Delta Plan, the fact is that the weather is the fundamental determinant of export water deliveries – and that is not “predictable”. The issues of reducing regulatory and operational uncertainty, as well as increasing the reliability and resiliency of infrastructure related to project exports, are central to making the system more “reliable”.

P 69 L 25: **delete** This bullet is not part of the “inherent” policies identified for achieving the coequal goals and management of the Delta in section 85020 of the Act, nor is it included anywhere in the Act as a component of the Delta Plan. If it is to be kept, then the full language should be included and **added**; “Reduced reliance on the Delta to meet California’s future water supply needs through improved regional self-reliance”.

P 70 Figure: Last ¶ last clause: As written, this implies that only dedicated environmental flows are reused, when in fact much agricultural water is reused via return flows or groundwater recharge, and even urban supplies are being reused on a growing scale. This should be rewritten to reflect that above reality, consistent with note 7 on page 71.

P 71 L 18-20: Why are agricultural and urban return flows “to the environment” relegated to a footnote, while “environmental water” that is “reused for urban and agricultural purposes” is included in the text? This reflects a bias that is in appropriate. We suggest moving note 7 into the narrative.

P 71 L 22: **modify** and **add** “...~~managing~~ **manage** the available runoff to meet urban and agricultural water needs while also meeting environmental standards.”

P 75 L 14: **delete** “...improving the reliability of ~~the~~ California’s water supplies.”

P 77 L 5-6: This references a reduction from 63 percent to 60 percent in the context of impacts from the biological opinions. The reference incorrectly uses a baseline of the 2007 SWP Delivery Reliability Report, which contains the bulk of the biological opinion restrictions (it used the Wanger Interim Remedy criteria for operations). The appropriate reference to describe impacts from the biological opinions is to compare 2009 with 2005, which used the D-1641 baseline.

P 77 L 32-33: The narrative references Zone 7 Water Agency as getting up to 90% of its water supply from the SWP. Zone 7's UWMP shows 70% reliance on SWP. There is no reference supplied to substantiate this number.

P 77 L 11: ~~substitute~~ "...supply demands ~~placed~~ ~~place~~ upon it."

P 77 L 12-13: ~~delete~~ This sentence should be deleted. As noted regarding similar comments on page 5, this is opinion that is demonstrably false by merely reading the shortage provisions of the contracts and misrepresents the truth. Because the contractors, more than anyone, understand the limitations on the system and the variability of deliveries as a consequence of the noted infrastructure deficiencies and the vagaries of the weather, the rationale for including such a statement is hard to fathom other than as an attempt to initiate some grand overhaul of the project contracts. While a topic potentially with merit, it does not have a place in the Delta Plan.

P 78 Figure L 2-3: This states that the average project deliveries are "around 6 million acre-feet", yet on page 75 (L 34-35) the document states that project deliveries ranged from 3MAF to 6MAF. If 6MAF is the high end of the range, how can it also be the "average"? We know that in recent years deliveries have been much less, and without implementation of the BDCP, it is not expected, except in exceptional years such as the current one, that deliveries will approach the 6MAF mark. We suggest using a range as was done on page 75 rather than trying a single number, which cannot reflect the variability of dry and wet years.

P 80 L 14: ~~delete~~ "~~per-year~~" twice This does not come across correctly. As written, the recycled water goals come across as additive on an annual basis rather than cumulative. The goal is to have 1MAF of recycled water being used by 2020 and 2MAF by 2030, not increasing the amount used by those amounts each year, which would be amazing but...

P 80 L 18: ~~delete~~ "~~per-year~~" twice Same problem as above.

P 80 L 29: ~~modify~~ and ~~add~~ "...urban and ~~agriculture~~ agricultural uses that will...."

P 80 L 35: ~~delete~~ "...agricultural ~~water-supplies~~ and urban water suppliers...."

P 81 L9-10 ~~add~~ "...their actions to reduce California's reliance on water from the Delta or the Delta watershed to meet future water supply needs." While section 85021 is indeed a policy directive of the

Delta Reform Act, it is a policy that the Delta Plan will contribute toward the achievement of but which it is not responsible for achieving. This sentence overstates the role of the Delta Plan in this area.

P 81 L 15: In addition to the \$1 billion, it would be beneficial to approximately identify how many dollars of local money were leveraged by the state grants. It should be in the range of an additional \$1.5-2 billion?

P 81 L 25: The 75 percent figure for UWMP submittals is from 2006. Is there no newer data than this 5 year old status?

P 82 L 4-8: The Plan still includes the ambiguous and unworkable trigger that failure by one *“or more water suppliers that receive water from the Delta”* to comply with listed actions will itself cause movement of water through the Delta to be inconsistent. In the first place, the Council is not authorized to deem an action inconsistent unless the action violates the legislatively adopted criteria. An action is only inconsistent if it “will have a significant adverse impact on the achievement of one or both of the coequal goals” or implementation of flood control programs. The Council simply cannot call an action inconsistent simply because the project proponent (or a sub-agency) has not adopted a practice the Council thinks it should. More to the point here, while it is not clear, is the Council proposing that if for example a DWR contractor has not adopted one of the Council’s proposed practices, then the Council can simply stop a DWR action that would provide Delta water to all of its contractors? Or if a contractor’s sub-agency has not adopted one of the Council’s proposed mandates, then is the contractor is ineligible to pursue Sacramento Valley water transfers? This proposed policy is well beyond any logical reading of the statutory language and should be deleted or, at a minimum, significantly rethought.

P 82 L 17: bullet format between urban suppliers and agricultural suppliers should be consistent.

P 83-84: Conservation oriented water rate structure. This concept needs significantly more thought and detail. How does it differentiate, if it does, between wholesalers and retailers? Between urban and agricultural suppliers? A process to develop guidelines is conspicuously absent from the recommendations, unlike the recommendation for a process to develop guidelines for the “Water Reliability Element”.

P 84 L 35-36: This concept continues to fail to explicitly identify if this means truly any new point of diversion or use or purpose even if the water being used is within existing water rights. If it is, this recommendation would essentially disregard water rights in certain instances. That is objectionable and this should be deleted or modified to be applicable to only new water rights applications.

P 85 L 9-21: Use of “flow requirements” (twice) and “flow objectives” should be checked for being the proper terms. The Board sets water quality standards, and then flow management is one tool it has to contribute toward the achievement of those standards, usually through a water rights process to allocate responsibility for ensuring necessary flows consistent with water rights and the public trust.

The description of this complicated process should not be shorthanded with terms that may not be as precise as required.

P 85 L 12: **substitute** "...native Delta fish and then ~~the~~ determining Delta flows...."

P 85 L12-15: **delete** This sentence should be deleted since it is another false statement of opinion that doesn't reflect reality. In fact, what is stated as what "cannot" be done is what the BDCP is doing, with regard to conveyance. The BDCP process is including development of proposed operational criteria to feed into a SWRCB process to potentially modify the current WQCP.

P 86 L 2-4: **delete** or **modify** per comment above.

P 87 L 38: **delete** "~~Existing~~" As written this implies that all that is contemplated is improving the current through-Delta conveyance system. That is not the case. Deleting "existing", however, does not preclude improvements to current through-Delta conveyance.

P 87 L 39: **delete** "...storage and ~~existing~~ Delta conveyance ~~facilities~~ are critical...."

P 90 L 10: **add** "...identify projects throughout California that could be implemented...."

P 90 L 13: **add** "...and water transfers in furtherance of the coequal goals."

P 90 L 30-34: This paragraph again overstates the deficiencies of groundwater management in California. Continuing to do so undermines the Council's credibility and hence the receptivity to and effectiveness of related and unrelated recommendations and proposed policies. Groundwater in most areas of the state is regulated, but it is done at the local level. The exceptions are areas where there is little or no management, but generally those are areas where there is little stress on the basin(s) and there is little or no need for management. This paragraph should be rewritten or **deleted**.

P 90 L 35-36: This sentence is not true. There are reams of information available. They are just not centrally located at the State. However, in recent years more and more information has been provided to DWR, and the Act added additional monitoring and reporting requirements. The real story is one of progress in groundwater management and improved statewide understanding and coordination of data. Generally, the representations of groundwater management in the 5<sup>th</sup> Draft Delta Plan are outdated and present an inaccurate and distorted picture that is a disservice to the reader.

P 93 L 15: **modify** "~~The~~ In some areas, continued...."

P 93 L 18: **delete** "...environmental harm to ~~the~~ California."

P 94 L 26-30: While the percentages of reporting are notable, it is important to include some context as well. How many of the permits not being reported are above some de minimis amount of water and/or

do not provide significant return flow to the source? In addition to talking about the problem of unreported diversions, it would be appropriate to discuss the need for more enforcement of water rights and reporting requirements generally. The proposed Water Bond includes financing support for the SWRCB to significantly increase its enforcement activities.

P 94 note 36: substitute “...(3) encourage efforts to protect and [manage](#) ~~management~~ groundwater....”

P 95 L 6:. No reference supplied for statement that Reclamation requires all contracts to be conducted in public. Available references on Reclamation policy on the internet do not support this statement.

P 98 L 2: ~~delete~~ “...toward meeting ~~the~~ California’s conservation....”

P 108 L 8: [substitute](#) “...~~the natural flow regime~~ [a more naturally variable hydrograph](#) and adequate....”

P 110 L 42: [substitute](#) “...includes creating a more [naturally variable hydrograph](#) ~~natural flow regime~~, restoring habitats....”

P 111 Figure: section “2)” states that “Peak flows now come earlier”, but the charts don’t show that. The peaks are still in the same months on the Sacramento. On the San Joaquin the peak is earlier and much more attenuated. The text should accurately portray the differences between the two watersheds.

P 111 Figure: Graph is confusing. Reference DWR,2003 is not listed in chapter bibliography. There is also a reference to a November 2006 report, however that report is not in the chapter bibliography. The reference probably should be to the DWR November 2006 report, however that report does not include data through 2005 as indicated on the graph, so something is missing. In addition, there is no reference to indicate that “Seasonal flows are much less variable,...” as indicated in the sidebar.

P 112 L 2: [substitute](#) “Creating a More [Naturally Variable Hydrograph](#) ~~Natural Flow Regime~~”

P 112 L 3-9: ~~rewrite~~ This paragraph should be revised to focus less on “flow” and more on the “hydrograph”. While “flow” is a shorthand that, as the welcome box on page 113 describes, represents more than the flow of water molecules to scientists, the lay reader assumes flow means “flow”, i.e. volume of water, consequently, as written the reader will have a misperception reinforced rather than being presented with a more precise description of the various factors impacting the health of species and the capability of the ecosystem to provide various functions and services to them.

P 112 L 31: [substitute](#) “Creating a more [naturally variable hydrograph](#) ~~natural flow regime~~ in the Delta....”

P 112 L 34: [substitute](#) “...adapted to [a hydrograph](#) ~~flow regimes~~ characteristic of....”



P 112 L 36: substitute “Altered Delta hydrology is ~~flow regimes are~~ detrimental to....”

P 120 L 18: substitutes “...clarify how a more naturally variable hydrograph ~~natural flows~~ and ecosystem....”

P 136 L 38-41: This description does not represent the total picture. While operation of the projects have shifted the salinity gradient eastward during portions of the year, it has also provided a more western gradient than would have occurred without the projects in place at other times of the year. This was recently affirmed in Judge Wanger’s decision regarding the imposition of Fall X2 this year and the reader deserves a complete picture not just that which provides fodder to the author’s particular viewpoint.

P 138 L 9-11: Discussion of salinity discharges in San Joaquin Valley does not recognize significant reduction in salinity loading in recent years due to drainage management.

Page 141, lines 22-25: The WQ R5 recommendation addresses participation in the Central Valley Salinity Alternatives for Long-Term Sustainability Program (CV-SALTS), yet there is no description of CV-SALTS in the chapter. The Council should include a description of CV-SALTS in the salinity section in Chapter 6, which describes the program objectives, schedule and progress to date. The WQ R5 recommendation should also be moved to the salinity section.

P 142 L 21: ~~delete~~ The repeating of assertions of one scientist against another’s work are inappropriate and should be deleted unless the maligned scientist’s opinion of the other’s work can be included as well. The pejoratives add nothing and add weight to the perception of bias in the Delta Plan. “...Cloern et al. (2011), ~~who demonstrate that the statistical methods used to derive the food web relationships are inappropriate and generate false correlations,~~ argue that no relationship....” In addition, a new Glibert paper will be published prior to finalizing of Delta Plan so this discussion should be updated to reflect that new research.

Page 144, lines 3-6: Three nutrient issues that are the subject of scientific debate and discussion are listed here. The Council should add the following nutrient issue to the list: “the relationship between nutrient ratios and changes in the food web.”

Page 145, line 21: The text should be corrected to indicate that the Delta methylmercury TMDL was adopted by the Central Valley Regional Board in April 2010 and approved by the State Board on June 21, 2011.

P 146 L 1-2: The assertion of methylmercury impacts from changes in conveyance of freshwater across the Delta is not substantiated with references that indicate a mechanism for how this could work. This is really just speculation and should be deleted.

Page 146, lines 2-3: Delete the text “. . . and from changes in the conveyance of freshwater across the Delta”. There is no discussion in the text to support this statement.

P 146 L 42-47: Need to recognize major reduction in selenium loading over last decade due to salinity management practices.

P 200 L 8: add "...in 2012, consistent with the coequal goals and the Delta Plan."

P 200 L 15: add "...recommendations incorporated into the Delta Plan by the Council as being consistent with the coequal goals with adequate funding...."

P 200 L 20-21: The performance measure seeking to maintain or increase "[t]otal agricultural acreage and gross revenue in the Delta" is inconsistent with the coequal goals. While the latter goal is worth pursuing, the former metric is unrealistic considering the likely conversion of agricultural lands into habitat. This language should be modified.

P 211 L 20: We do not believe the Council is the appropriate forum to develop fees. The Legislature is the appropriate forum for such an exercise. The Council could convene and facilitate a workgroup to develop recommendations for consideration by the Legislature.